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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
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21 November-9 December 1994

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

General Comment No. 5 (Eleventh session, 1994)*

Persons with disabilities

1. The central importance of the International Covenant on Economic, Social and Cultural Rights in relation to the human rights of persons with disabilities has frequently been underlined by the international community. 1/ Thus a 1992 review by the Secretary-General of the implementation of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons concluded that "disability is closely linked to economic and social factors" and that "conditions of living in large parts of the world are so desperate that the provision of basic needs for all - food, water, shelter, health protection and education - must form the cornerstone of national programmes". 2/ Even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant.

2. The Committee on Economic, Social and Cultural Rights, and the working group which preceded it, have been explicitly called upon by both the General Assembly 3/ and the Commission on Human Rights 4/ to monitor the compliance of States parties to the Covenant with their obligation to ensure

* Adopted at the 38th meeting, on 25 November 1994.

the full enjoyment of the relevant rights by persons with disabilities. The Committee's experience to date, however, indicates that States parties have devoted very little attention to this issue in their reports. This appears to be consistent with the Secretary-General's conclusion that "most Governments still lack decisive concerted measures that would effectively improve the situation" of persons with disabilities. 5/ It is therefore appropriate to review, and emphasize, some of the ways in which issues concerning persons with disabilities arise in connection with the obligations contained in the Covenant.

3. There is still no internationally accepted definition of the term "disability". For present purposes, however, it is sufficient to rely on the approach adopted in the Standard Rules of 1993, which state:

> "The term 'disability' summarizes a great number of different functional limitations occurring in any population ... People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature." 6/

4. In accordance with the approach adopted in the Standard Rules, this General Comment uses the term "persons with disabilities" rather than the older term "disabled persons". It has been suggested that the latter term might be misinterpreted to imply that the ability of the individual to function as a person has been disabled.

5. The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. In addition, in so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Covenant that the rights "enunciated ... will be exercised without discrimination of any kind" based on certain specified grounds "or other status" clearly applies to discrimination on the grounds of disability.

6. The absence of an explicit, disability-related provision in the Covenant can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically. They include the Convention on the Rights of the Child (art. 23), the African Charter on Human and Peoples' Rights (art. 18 (4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 18). Thus it is now very widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes.

7. In accordance with this approach, the international community has affirmed its commitment to ensuring the full range of human rights for persons with disabilities in the following instruments: (a) the World Programme of Action concerning Disabled Persons, which provides a policy framework aimed at promoting "effective measures for prevention of disability, rehabilitation and the realization of the goals of 'full participation' of [persons with disabilities] in social life and development, and of 'equality'"; 7/ (b) the Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies, adopted in 1990; 8/ (c) the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted in 1991; 9/ (d) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (hereinafter referred to as the "Standard Rules"), adopted in 1993, the purpose of which is to ensure that all persons with disabilities "may exercise the same rights and obligations as others". 10/ The Standard Rules are of major importance and constitute a particularly valuable reference guide in identifying more precisely the relevant obligations of States parties under the Covenant.

I. GENERAL OBLIGATIONS OF STATES PARTIES

8. The United Nations has estimated that there are more than 500 million persons with disabilities in the world today. Of that number, 80 per cent live in rural areas in developing countries. Seventy per cent of the total are estimated to have either limited or no access to the services they need. The challenge of improving the situation of persons with disabilities is thus of direct relevance to every State party to the Covenant. While the means chosen to promote the full realization of the economic, social and cultural rights of this group will inevitably differ significantly from one country to another, there is no country in which a major policy and programme effort is not required. 11/

9. The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.

10. According to a report by the Secretary-General, developments over the past decade in both developed and developing countries have been especially unfavourable from the perspective of persons with disabilities:

> "... current economic and social deterioration, marked by low-growth rates, high unemployment, reduced public expenditure, current structural adjustment programmes and privatization, have negatively affected programmes and services ... If the present negative trends

> continue, there is the risk that [persons with disabilities] may increasingly be relegated to the margins of society, dependent on ad hoc support." 12/

As the Committee has previously observed (General Comment No. 3 (Fifth session, 1990), para. 12), the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints.

11. Given the increasing commitment of Governments around the world to market-based policies, it is appropriate in that context to emphasize certain aspects of States parties' obligations. One is the need to ensure that not only the public sphere, but also the private sphere, are, within appropriate limits, subject to regulation to ensure the equitable treatment of persons with disabilities. In a context in which arrangements for the provision of public services are increasingly being privatized and in which the free market is being relied on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subject to both non-discrimination and equality norms in relation to persons with disabilities. In circumstances where such protection does not extend beyond the public domain, the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained. This is not to imply that legislative measures will always be the most effective means of seeking to eliminate discrimination within the private sphere. Thus, for example, the Standard Rules place particular emphasis on the need for States to "take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution". 13/

12. In the absence of government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for persons with disabilities, either individually or as a group, and in such circumstances it is incumbent on Governments to step in and take appropriate measures to temper, complement, compensate for, or override the results produced by market forces. Similarly, while it is appropriate for Governments to rely on private, voluntary groups to assist persons with disabilities in various ways, such arrangements can never absolve Governments from their duty to ensure full compliance with their obligations under the Covenant. As the World Programme of Action concerning Disabled Persons states, "the ultimate responsibility for remedying the conditions that lead to impairment and for dealing with the consequences of disability rests with Governments". 14/

II. MEANS OF IMPLEMENTATION

13. The methods to be used by States parties in seeking to implement their obligations under the Covenant towards persons with disabilities are essentially the same as those available in relation to other obligations (see General Comment No. 1 (Third session, 1989)). They include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State; the need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where

necessary, seek international cooperation and assistance. In the latter respect, international cooperation in accordance with articles 22 and 23 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.

14. In addition, it has been consistently acknowledged by the international community that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned. For this reason, the Standard Rules recommend that everything possible be done to facilitate the establishment of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters. In doing so, Governments should take account of the 1990 Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies. 15/

III. THE OBLIGATION TO ELIMINATE DISCRIMINATION ON THE GROUNDS OF DISABILITY

15. Both de jure and de facto discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.

16. Despite some progress in terms of legislation over the past decade, 16/ the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.

17. Anti-discrimination measures should be based on the principle of equal rights for persons with disabilities and the non-disabled, which, in the words of the World Programme of Action concerning Disabled Persons, "implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for the planning of societies, and that all

resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation. Disability policies should ensure the access of [persons with disabilities] to all community services". 17/

18. Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of article 2 (2) of the International Covenant on Economic, Social and Cultural Rights as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.

IV. SPECIFIC PROVISIONS OF THE COVENANT

A. Article 3 - Equal rights for men and women

19. Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected. 18/ Despite frequent calls by the international community for particular emphasis to be placed upon their situation, very few efforts have been undertaken during the Decade. The neglect of women with disabilities is mentioned several times in the report of the Secretary-General on the implementation of the World Programme of Action. 19/ The Committee therefore urges States parties to address the situation of women with disabilities, with high priority being given in future to the implementation of economic, social and cultural rights-related programmes.

B. Articles 6-8 - Rights relating to work

20. The field of employment is one in which disability-based discrimination has been prominent and persistent. In most countries the unemployment rate among persons with disabilities is two to three times higher than the unemployment rate for persons without disabilities. Where persons with disabilities are employed, they are mostly engaged in low-paid jobs with little social and legal security and are often segregated from the mainstream of the labour market. The integration of persons with disabilities into the regular labour market should be actively supported by States.

21. The "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" (art. 6 (1)) is not realized where the only real opportunity open to disabled workers is to work in so-called "sheltered" facilities under substandard conditions. Arrangements whereby persons with a certain category of disability are effectively confined to certain occupations or to the production of certain goods may violate this right. Similarly, in the light of principle 13 (3) of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, 20/ "therapeutical treatment" in institutions which amounts to forced labour is also incompatible with the Covenant. In this regard, the prohibition on forced labour contained in the International Covenant on Civil and Political Rights is also of potential relevance.

22. According to the Standard Rules, persons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful

employment in the labour market. 21/ For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. As the International Labour Organisation has noted, it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace which are then cited as the reason why persons with disabilities cannot be employed. 22/ For example, as long as workplaces are designed and built in ways that make them inaccessible to wheelchairs, employers will be able to "justify" their failure to employ wheelchair users. Governments should also develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.

23. Similarly, the failure of Governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.

24. The "technical and vocational guidance and training programmes" required under article 6 (2) of the Covenant should reflect the needs of all persons with disabilities, take place in integrated settings, and be planned and implemented with the full involvement of representatives of persons with disabilities.

25. The right to "the enjoyment of just and favourable conditions of work" (art. 7) applies to all disabled workers, whether they work in sheltered facilities or in the open labour market. Disabled workers may not be discriminated against with respect to wages or other conditions if their work is equal to that of non-disabled workers. States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages.

26. Trade union-related rights (art. 8) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market. In addition, article 8, read in conjunction with other rights such as the right to freedom of association, serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in "the promotion and protection of [the] economic and social interests" (art. 8 (1) (a)) of such persons, they should be consulted regularly by government bodies and others in relation to all matters affecting them; it may also be necessary that they be supported financially and otherwise so as to ensure their viability.

27. The International Labour Organisation has developed valuable and comprehensive instruments with respect to the work-related rights of persons with disabilities, including in particular Convention No. 159 (1983) concerning vocational rehabilitation and employment of persons with disabilities. 23/ The Committee encourages States parties to the Covenant to consider ratifying that Convention.

C. Article 9 - Social security

28. Social security and income-maintenance schemes are of particular importance for persons with disabilities. As stated in the Standard Rules, "States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities". 24/ Such support should reflect the special needs for assistance and other expenses often associated with disability. In addition, as far as possible, the support provided should also cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities. Such persons, including members of the families of persons with disabilities, are often in urgent need of financial support because of their assistance role. 25/

29. Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons.

D. Article 10 - Protection of the family and of mothers and children

30. In the case of persons with disabilities, the Covenant's requirement that "protection and assistance" be rendered to the family means that everything possible should be done to enable such persons, when they so wish, to live with their families. Article 10 also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities. 26/ In this and other contexts, the term "family" should be interpreted broadly and in accordance with appropriate local usage. States parties should ensure that laws and social policies and practices do not impede the realization of these rights. Persons with disabilities should have access to necessary counselling services in order to fulfil their rights and duties within the family. 27/

31. Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood". 28/ The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities worldwide. 29/ Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).

32. Children with disabilities are especially vulnerable to exploitation, abuse and neglect and are, in accordance with article 10 (3) of the Covenant (reinforced by the corresponding provisions of the Convention on the Rights of the Child), entitled to special protection.

E. Article 11 - The right to an adequate standard of living

33. In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that "support services, including assistive devices" are available "for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights". 30/ The right to adequate clothing also assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Wherever possible, appropriate personal assistance should also be provided in this connection. Such assistance should be undertaken in a manner and spirit which fully respect the human rights of the person(s) concerned. Similarly, as already noted by the Committee in paragraph 8 of General Comment No. 4 (Sixth session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.

F. Article 12 - The right to physical and mental health

34. According to the Standard Rules, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society". 31/ The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services - including orthopaedic devices - which enable persons with disabilities to become independent, prevent further disabilities and support their social integration. 32/ Similarly, such persons should be provided with rehabilitation services which would enable them "to reach and sustain their optimum level of independence and functioning". 33/ All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.

G. Articles 13 and 14 - The right to education

35. School programmes in many countries today recognize that persons with disabilities can best be educated within the general education system. 34/ Thus the Standard Rules provide that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings". 35/ In order to implement such an approach, States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.

H. Article 15 - The right to take part in cultural life and enjoy the benefits of scientific progress

36. The Standard Rules provide that "States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. ... States

should promote the accessibility to and availability of places for cultural performances and services ... ". 36/ The same applies to places for recreation, sports and tourism.

37. The right to full participation in cultural and recreational life for persons with disabilities further requires that communication barriers be eliminated to the greatest extent possible. Useful measures in this regard might include "the use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, [and] adapted television and theatre for deaf persons". 37/

38. In order to facilitate the equal participation in cultural life of persons with disabilities, Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against persons with disabilities, for example those that view epilepsy as a form of spirit possession or a child with disabilities as a form of punishment visited upon the family. Similarly, the general public should be educated to accept that persons with disabilities have as much right as any other person to make use of restaurants, hotels, recreation centres and cultural venues.

Notes

1/ For a comprehensive review of the question, see the final report prepared by Mr Leandro Despouy, Special Rapporteur, on human rights and disability (E/CN.4/Sub.2/1991/31).

2/ See A/47/415, para. 5.

3/ See para. 165 of the World Programme of Action concerning Disabled Persons, adopted by the General Assembly by its resolution 37/52 of 3 December 1982 (para. 1).

4/ See Commission on Human Rights resolutions 1992/48, para. 4 and 1993/29, para. 7.

5/ See A/47/415, para. 6.

6/ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, annexed to General Assembly resolution 48/96 of 20 December 1993 (Introduction, para. 17).

7/ World Programme of Action concerning Disabled Persons (see note 3 above), para. 1.

8/ A/C.3/46/4, annex I. Also contained in the Report on the International Meeting on the Roles and Functions of National Coordinating Committees on Disability in Developing Countries, Beijing, 5-11 November 1990 (CSDHA/DDP/NDC/4). See also Economic and Social Council resolution 1991/8 and General Assembly resolution 46/96 of 16 December 1991.

9/ General Assembly resolution 46/119 of 17 December 1991, annex.

10/ Standard Rules, (see note 6 above), Introduction, para. 15.

11/ See A/47/415, passim.

12/ Ibid., para. 5.

13/ Standard Rules, (see note 6 above) Rule 1.

14/ World Programme of Action concerning Disabled Persons (see note 3 above), para. 3.

15/ See note 8 above.

16/ See A/47/415, paras. 37-38.

17/ World Programme of Action concerning Disabled Persons (see note 3 above), para. 25.

18/ See E/CN.4/Sub.2/1991/31 (see note 1 above), para. 140.

19/ See A/47/415, paras. 35, 46, 74 and 77.

20/ See note 9 above.

21/ Standard Rules (see note 6 above), Rule 7.

22/ See A/CONF.157/PC/61/Add.10, p. 12.

23/ See also Recommendation No. 99 (1955) concerning vocational rehabilitation of the disabled, and Recommendation No. 168 (1983) concerning vocational rehabilitation and employment of persons with disabilities.

24/ Standard Rules (see note 6 above) Rule 8, para. 1.

25/ See A/47/415, para. 78.

26/ See E/CN.4/Sub.2/1991/31 (see note 1 above), paras. 190 and 193.

27/ See the World Programme of Action concerning Disabled Persons (see note 3 above) para. 74.

28/ Standard Rules (see note 6 above), Rule 9, para. 2.

29/ See E/CN.6/1991/2, paras. 14 and 59-68.

30/ Standard Rules (see note 6 above), Rule 4.

31/ Ibid., Rule 2, para. 3.

32/ See the Declaration on the Rights of Disabled Persons (General Assembly resolution 3447 (XXX) of 9 December 1975), para. 6; and the World Programme of Action concerning Disabled Persons (see note 3 above), paras. 95-107.

33/ Standard Rules (see note 6 above), Rule 3.

34/ See A/47/415 para. 73.

35/ Standard Rules (see note 6 above), Rule 6.

36/ Ibid., Rule 10, paras. 1-2.

37/ See A/47/415 para. 79.

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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic,
Social and Cultural Rights

ARGENTINA

1. The Committee considered the second periodic report of the Republic of Argentina on articles 6-12 of the Covenant (E/1990/5/Add.18) at its 30th, 31st and 34th meetings on 22 and 24 November 1994 and adopted1/ the following concluding observations:

A. Introduction

2. The Committee expresses its thanks to the Government of the Republic of Argentina for submitting its second periodic report in 1993 and welcomes the additional information provided by the Government on articles 9-12.

3. The Committee reiterates the obligation of States parties to submit full reports relating to the articles under consideration and specifically to the issues communicated to them before the consideration of each report. The Committee emphasizes that the objective must be to present a clear picture of the situation with regard to economic, social and cultural rights in the country's report; even though information submitted previously to another treaty body does not need to be repeated in the Committee, it is the responsibility of the State to make appropriate references in conformity with article 17 (3).

4. The Committee has considered with interest Argentina's written report, which contains important legal information, and has listened to the oral presentation, which placed the written report in a macroeconomic perspective. Nevertheless, the Committee notes the absence of specific information

1/ At its 54th meeting (eleventh session) held on 8 December 1994.

necessary in order to ascertain whether economic, social and cultural rights are being respected in Argentina, both collectively and individually.

5. The Committee acknowledges the reference made by the Government to a report which it had submitted to the Committee on the Rights of the Child. Since at present our Committee does not limit the consideration of articles 10-12 to the well-being of the child, the Committee welcomes the indications by the Government that it will submit to the Committee additional information on the remaining issues dealt with in these articles.

B. Positive aspects

6. The Committee welcomes the economic progress achieved by Argentina in recent years, especially in efforts to combat inflation, and in the areas of monetary stability and real economic growth. The Committee considers that these conditions are conducive to the promotion of economic, social and cultural rights, although their implementation does not necessarily derive from them.

7. The Committee notes with satisfaction the Government's programmes and activities relating to the rights of the family and the child. Mother and child care has been actively pursued and documented, and the "school canteen programme" appears to be receiving appropriate government support.

8. The Committee takes note of the Government's plan to facilitate home ownership by tenants illegally occupying government property by giving them the opportunity to purchase the land they are occupying at preferential loan rates. Although more factual data are required to ascertain how many people and families have found a permanent solution through the "land plan", the Committee welcomes the concept underlying the plan.

9. In this context, the Committee notes the Government's efforts to increase the percentage of the budget devoted to public welfare, particularly in the area of workers' pensions. It also notes the expressed intention of the Government to initiate periodic programmes for the training of unemployed and underemployed persons.

C. Factors and difficulties impeding the implementation of the Covenant

10. The Committee acknowledges the difficulties encountered by Argentina since democracy was restored in 1983. The efforts to deal with the growing demand for public services have been paralysed by a substantial fiscal

deficit, the external debt and the hyperinflation inherited from the pre-democratic years.

11. Adjustment to a more rational economic order has been difficult for Argentine society as a whole and for Argentine workers in particular. The Government has succeeded in stabilizing the value of the currency but the implementation of the structural adjustment programme may harm certain social groups. In the light of this policy, it is unclear whether the Government has taken measures to resolve the problem of housing and pensions.

D. Principal subjects of concern

12. The Committee notes with concern the way in which on the "temporary" workers, as they are known in Argentina, are treated since the measures taken to guarantee the economic, social and cultural rights of "temporary" workers appear inadequate, particularly in times of growing unemployment.

13. The Committee also notes with concern the extension of the Government's privatization of pensions programme. The basic payment system, to which all are entitled, is gradually being replaced by a new capitalization scheme whose return depends on the pensioner's contributions. This calls in question the prospects for those who are unable to capitalize adequate pensions, including lower-paid workers, and unemployed and underemployed persons.

14. In connection with the Government's training programme, the Committee has been unable to evaluate the need for it and the impact of such programmes owing to the absence of statistics on the population affected.

15. The Committee acknowledges the initiatives taken by the Government to overcome the housing shortage in Argentina. However, there is no indication that its policies, whether those currently under way or those planned for the future, are adequate to meet all the needs.

16. The Committee specifically notes with concern the legal provision permitting rent increases of about 12 per cent, approximately double the previous year's inflation rate, while wages are apparently frozen.

17. The Committee is very concerned at the large number of illegal occupations of buildings particularly in Buenos Aires and at the conditions in which expulsions are carried out. The Committee draws the attention of the Government to the full text of its General Comment No. 4 on "the Right to

Adequate Housing (article 11 (1) of the Covenant)" and urges the Government to ensure that policy, legislation and practice take due account of that General Comment.

18. The Committee, while conscious of the Government's efforts to increase awareness of hygiene and safety in the workplace through public campaigns, observes that such campaigns have not proved effective and that hygiene and safety in the workplace are frequently below established standards.

19. Despite the suggestion made by the Representative of the Government that the indigenous population in Argentina is small, the Committee is nevertheless surprised at the absence of information about specific programmes adopted by the Government to guarantee the economic, social and cultural rights of the ethnic minorities.

E. Suggestions and recommendations

20. In the light of the inadequacy of the report and the additional information submitted by the Government of Argentina, the Committee invites the Government to submit a further report containing full details relating to articles 9-11 of the Covenant. The Committee emphasizes that the new report and all subsequent reports ought to be drafted in conformity with the Committee's revised guidelines of 1990 (E/C.12/1991/1) and that the new report must also refer to the issues mentioned in the questionnaire communicated to the Government before the commencement of the dialogue.

21. The Committee urges the Government to analyse the reasons for the lack of effectiveness of its initiatives in the area of safety and hygiene in the workplace and to make greater efforts to improve all aspects of environmental and industrial hygiene and safety.

22. In relation to the stabilization programmes, the Committee, while acknowledging the great success achieved through privatization and decentralization at the macroeconomic level, observes that such measures are not being adequately monitored and thus are leading to the violation of economic, social and cultural rights.

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DOMINICAN REPUBLIC*

A. Introduction

1. On 30 November 1994, at its 43rd meeting, the Committee examined matters arising out of the requests to the Government of the Dominican Republic for the provision of additional information, in particular relating to the right to adequate housing. The Committee has devoted ongoing attention to the issues since its fifth session (1990), with particular concern about alleged instances of large-scale forced evictions. At its tenth session the Committee urged the Government to "take all appropriate measures in the meantime to ensure full respect for all economic, social and cultural rights, in particular in relation to the right to housing" (E/C.12/1994/SR.5).

2. The Committee appreciates the appearance before it of two representatives, including an expert from the capital, and the opportunity to engage in a constructive dialogue with the Government on the right to adequate housing.

* Adopted at the 55th meeting (eleventh session) held on 8 December 1994.

GE.94-70483 (E)

B. Positive aspects

3. The Committee welcomes the frank and open manner in which the Government responded to questions put to it and its willingness to acknowledge many of the difficulties which have impeded the implementation of the Covenant. In particular, the Committee welcomes the information received on the extent of the practice of forced evictions, the impact of fraud and other unfair practices in the allocation of public housing units and information concerning positive changes in Government policy.

4. The Committee notes the housing rights provisions in article 8 (15) (b) of the Constitution and several recent amendments to the relevant provisions of the Constitution. It notes that these provisions could, if reflected fully in law and practice, assist in promoting enhanced accountability and the development of judicial procedures which would provide an effective means of recourse for those whose right to housing is threatened.

5. The Committee welcomes those aspects of decrees 76-94 of 29 March 1994 and 155-94 of 11 May 1994 which commit the State to providing the broadest possible protection to the stability of the Dominican family and to giving property titles to all families who, up to 11 May 1994, have built homes on lands declared to be public property. The Committee also welcomes the decision by the Government to create a green belt around the city, and its commitment to construct 12,500 new housing units for low-income communities.

6. The Committee also welcomes the Government's statement of its intention to amend its legislation and policy to bring them into line with the obligations arising out of the Covenant and to take measures with regard to forced evictions and to adapt relocation policies to ensure that such measures are carried out only as a last resort and that when they do occur the principle of a "house for a house" will be respected. The indication by the Government that urgent consideration will be given to suspending decrees 358-91 and 359-91 is particularly welcomed by the Committee.

7. The Committee welcomes the undertaking by the Government to submit additional information on all questions which were unanswered and to give positive consideration to the Committee's request to send one or two of its members to the country with a view to assisting the Government in implementing the rights found in the Covenant.

C. Principal subjects of concern

8. The Committee reiterates the importance it attaches to the right to housing and reaffirms its long-standing view that forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in truly exceptional circumstances. The situation regarding forced evictions within the country continues to be viewed with concern by the Committee.

9. The Committee has received, over the course of several years, detailed and precise information relating to the housing situation in the Dominican Republic. This information has systematically been provided to the

Government with a request for comments as to its accuracy. That information has indicated, inter alia, that:

(1) Thirty thousand or more families residing in the Northern Zone (Zona Norte) of the capital are threatened with forced eviction under decrees 358-91, 359-91 and 76-94. Areas particularly affected are La Cienaga-los Guandules, Gualey, Barranca de Guachupita, Simon Bolivar, La Canada de Simon Bolivar, Barrio 27 de Febrero, La Zurza, Capotillo, Las Canitas, Ens Espaillat, Maquiteria, Simonico, Cristo Rey, Guaricano, Borojol, 24 de Abril and parts of the Colonial Zone;

(2) Thousands of families have been evicted from the site of the "Faro a Colon" in the city without regard to their rights;

(3) Forced evictions have also occurred in cities such as Santiago, San Juan de la Maguana, Boca Chica and El Seybo, as well as in rural areas such as Los Haitices and Jiguey-Aguacate;

(4) Of the many families relocated to sites on the periphery of Santo Domingo only a small proportion received relocation allowances while some 3,000 families received neither relocation allowances nor adequate compensation for their eviction;

(5) The current living conditions faced by those relocated as a result of Hurricane David in 1979, in particular the 106 families residing under the Duarte Bridge (Puente Duarte) and the 658 families residing in los Barrancones de Alcarrizo, are grossly inadequate.

10. While the Government presented the Committee with information as to the achievements and shortcomings of its various policies in relation to housing, the Committee did not receive any information which would lead it to conclude that these problems do not exist or have been adequately addressed.

11. It therefore expresses its serious concern at the nature and magnitude of the problems relating to forced evictions and calls upon the Government of the Dominican Republic to take urgent measures to promote full respect for the right to adequate housing. In this regard, the Committee notes that whenever an inhabited dwelling is either demolished or its inhabitants evicted, the Government is under an obligation to ensure that adequate alternative housing is provided. In this context "adequacy" requires relocation within a reasonable distance from the original site, and in a setting which has access to essential services such as water, electricity, drainage and garbage removal. Similarly, persons who are housed in conditions which threaten their life and health should, to the maximum of available resources, be adequately rehoused.

12. The Committee is concerned at the ease with which the Government is prepared to authorize or undertake the demolition of homes even when such dwellings are capable of being repaired or renovated. It appears that insufficient attention is paid in this context to extensive alternative community-development and urban improvement plans developed by popular organizations.

13. The Committee was informed that the national housing unit deficit currently stands at some 500,000 units. If correct, this level would be exceptionally high given the relatively small population of the country. While the Committee commends the Government for the construction of roughly 4,500 housing units annually, this quantity is clearly insufficient. Moreover, the Committee was also informed that less than 17 per cent of Government-built housing units are provided to the poorest sectors of society.

14. On the basis of the detailed information available to it the Committee also wishes to emphasize its concern at the "militarization" of La Cienaga - Los Guandules, the long-standing prohibition on improving or upgrading existing dwellings for the more than 60,000 residents of the area, and the inadequate and heavily polluted living conditions. The situation is especially problematic given that these communities were originally established as relocation areas for evictees in the 1950s. Since that time the Government has failed to confer legal security of tenure on residents or to provide basic civic services.

15. The Committee also notes that, based on available information, the situation of the 200,000 persons residing in rooming houses in Santo Domingo would often appear to be below any acceptable standards.

16. The Committee is also concerned at the effects Presidential decrees can and do have upon the enjoyment of the rights recognized in the Covenant. It wishes to emphasize in this regard the importance of establishing judicial remedies which can be invoked, including in relation to Presidential decrees, in order to seek redress for housing rights violations. The Committee is not aware of any housing rights matters that have been considered by the Supreme Court in relation to article 8 (15) (b) of the Constitution. In so far as this might be taken to indicate that the provision has not so far been subject to judicial review, the Committee expresses the hope that greater reliance will be placed upon it in future as a means by which to defend the right to adequate housing.

D. Suggestions and recommendations

17. The Committee draws the attention of the Government to the full text of its General Comment No. 4 on "The right to adequate housing (article 11 (1) of the Covenant)" and urges the Government to ensure that policy, legislation and practice take due account of that General Comment.

18. The Government should ensure that forced evictions are not carried out except in truly exceptional circumstances, following consideration of all possible alternatives and in full respect for the rights of all persons affected. On the basis of the information available to it, the Committee has no reason to conclude that existing plans for forced eviction in Santo Domingo, to which its attention has been drawn, are necessitated by any such exceptional circumstances.

19. All persons residing in extremely precarious conditions such as those residing under bridges, on cliff sides, in homes dangerously close to rivers, ravine dwellers, residents of Barrancones and Puente Duarte, and the more than 3,000 families evicted between 1980-1994 who have yet to receive relocation

sites (from Villa Juana, Villa Consuelo, Los Frailes, San Carlos, Guachupita, La Fuente, Zona Colonial, Maquiteria, Cristo Rey, La Cuarenta, Los Ríos and La Zurza), should all be ensured, in a rapid manner, the provision of adequate housing in full conformity with the provisions of the Covenant.

20. The Government should confer security of tenure on all dwellers lacking such protection at present, with particular reference to areas threatened with forced eviction.

21. The Committee notes that Presidential decrees 358-91 and 359-91 are formulated in a manner inconsistent with the provisions of the Covenant and urges the Government to consider the repeal of both of these decrees within the shortest possible time frame. The Government should seek to remove the military presence in La Cienaga-Los Guandules and allow residents the right to improve their homes and the community at large. The Government should also give careful consideration to implementing alternative development plans for the area, taking full account of plans developed by non-governmental and community-based organizations.

22. The Committee suggests that in order to promote the objectives referred to in these observations the Government might consider the establishment of commissions, composed of representatives of all relevant sectors of society, in particular civil society, to oversee the implementation of decrees 76-94 and 155-94.

23. The Committee requests the Government to apply existing housing rights provisions in the Constitution and for that purpose to take measures to facilitate and promote their application. Such measures could include: (a) adoption of comprehensive housing rights legislation; (b) legal recognition of the right of affected communities to information concerning any governmental plans actually or potentially affecting their rights; (c) adoption of urban reform legislation which recognizes the contribution of civil society in implementing the Covenant and addresses questions of security of tenure, regularization of land-ownership arrangements, etc.

24. In order to achieve progressively the right to housing, the Government is requested to undertake, to the maximum of available resources, the provision of basic services (water, electricity, drainage, sanitation, refuse disposal, etc.) to dwellings and ensure that public housing is provided to those groups of society with the greatest need. It should also seek to ensure that such measures are undertaken with full respect for the law.

25. In order to overcome the existing problems recognized by the Government in its dialogue with the Committee, the Government is urged to give consideration to initiatives designed to promote the participation of those affected in the design and implementation of housing policies. Such initiatives could include: (a) a formal commitment to facilitating popular participation in the urban development process; (b) legal recognition of community-based organizations; (c) the establishment of a system of community housing finance designed to open more lines of credit for poorer social sectors; (d) enhancing the role of municipal authorities in the housing sector; (e) improving coordination between the various governmental

institutions responsible for housing and considering the creation of a single governmental housing agency.

26. The Committee urges the Government to revise the 1994 Master Plan of Santo Domingo to bring it into line with the obligations arising under the Covenant and to involve civil society in the revision and implementation of the Plan. Forced evictions should not be envisaged except in full compliance with the conditions noted above.

27. Subsequent to the appearance before the Committee of two representatives of the Government of the Dominican Republic, the Committee received information that, based on a recommendation by the Special Committee on Urban Affairs, Decree No. 371-94 was promulgated on 1 December 1994, ordering the immediate eviction of two sectors situated on the banks of the Isabela River. In the implementation of this decree the Committee requests the Government to ensure its compliance with the terms of the Covenant and to take full account of the recommendations contained in these concluding observations. The Committee has also learned that the problem of evictions is attracting attention in the country's press and is aware of the polarization which the issue is currently causing in Dominican society. The Committee feels that it could make a more comprehensive assessment of the problem of evictions if the Government of the Dominican Republic were to invite one or two Committee members to make an in situ visit. The Committee therefore renews its request to the Government to send a two-person mission to the country and recalls that this request has already been endorsed clearly on two occasions by the Economic and Social Council.

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INDIANA UNIVERSITY

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

AUSTRIA

1. At its 39th, 40th and 41st meetings, held on 28 and 29 November 1994, the Committee considered the second periodic report of Austria concerning the rights covered by articles 6 to 9 and 13 to 15 of the Covenant (E/1990/6/Add.5), together with the written replies to the supplementary questions raised by the pre-sessional Working Group, and approved* the following observations.

A. Introduction

2. The Committee expresses its satisfaction to the State party at the detailed report submitted and the supplementary information that it provided in writing, and also at the constructive dialogue conducted between its members and the Austrian delegation.

3. The Committee greatly appreciates the Austrian delegation's frank, detailed replies to all its questions, which enabled it to gain an overall idea of the way in which Austria is discharging its obligations under the International Covenant on Economic, Social and Cultural Rights.

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* At its 52nd meeting (eleventh session), held 7 December 1994.

GE.95-15039 (E)

B. Positive aspects

4. The Committee welcomes the efforts made by the Austrian Government to create the conditions necessary for the exercise of the rights recognized under the Covenant. It notes with satisfaction the adoption of legislative measures guaranteeing non-discrimination against women, in particular Act No. 833/1992 amending the Equal Treatment Act of 1979, which addresses the problem of sex-based discrimination in the workplace, and the Federal Act on the Equal Treatment of Women and Men and the Advancement of Women in the Federal Service of 1993, as amended in 1994, which guarantees equal treatment for women and men employed by the federal Administration. The Committee notes the establishment, at the federal level, of the Equal Treatment Commission and the creation of the post of Equal Treatment Advocate.

5. The Committee takes note of the efforts made by the Austrian Government, notably in the field of education, to integrate foreign workers and their families. The Committee also notes the establishment of a fund for the integration of migrants, and also the measures taken to combat xenophobia and promote tolerance.

6. The Committee takes note of initiatives aimed at combating unemployment and the adverse effects of the restructuring of large companies, in particular the establishment of labour foundations.

7. The Committee expresses its satisfaction at the range and quality of the services provided to the population as a whole, and notably social benefits for elderly persons and the disabled.

8. The Committee notes with interest the efforts made in the field of vocational training and the wide spectrum of educational opportunities available after compulsory education has been completed. It takes note of the scope of the continuing education system, which enables adults steadily to expand their knowledge.

9. The Committee notes with satisfaction the various measures taken by the State party to ensure the protection of the various ethnic minorities and to guarantee them both the right to be educated in their mother tongue and the right to preserve and maintain their cultural identity. In this regard, the Committee welcomes the recognition of the Rom minority as a national minority, and notes with satisfaction the allocation of subsidies for the promotion of the cultural activities of minorities, and the establishment within the Federal Chancellery of Advisory Boards on Ethnic Minorities.

C. Principal subjects of concern

10. The Committee notes that the provisions of the universal human rights instruments, the Covenant among them, cannot be directly invoked before the Austrian courts, unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has been incorporated into domestic legislation and has the force of constitutional law. Although the Austrian delegation has stated that its national legislation is consistent with the provisions of the Covenant, the Committee nevertheless expresses its concern

that, in the event of a conflict between the provisions of the Covenant and those of domestic legislation, the international obligations entered into under the Covenant may not be fulfilled.

11. The Committee is concerned about the possible adverse consequences, for the implementation of the provisions of the Covenant concerning non-discrimination, of the regulations relating to the new law on residence and residence permits, whose purpose is to limit the number of foreigners authorized to work in Austria, and the conditions laid down - particularly in the area of housing - for the acquisition of an Austrian residence permit.

12. The Committee points out that the ILO Committee of Experts on the Application of Conventions and Recommendations, in its 1994 report to the International Labour Conference, expressed its concern at the persistence of inequalities in the remuneration of women as compared with men, especially in the private sector. In this context, the Committee notes that, despite the considerable legislative efforts made by the State party to ensure equality between the sexes, inequality persists in practice, particularly in the matter of promotion, and sometimes in the provision of social benefits.

13. The Committee observes that standards for the protection of workers concerning limits on the duration of the working day and weekly rest are not always fully met because some areas of the private sector are dilatory in enforcing the relevant legislation.

14. The Committee is also concerned that workers in small businesses (with five or fewer employees) seem not to enjoy adequate protection against the threat of dismissal or termination on the grounds of trade union activities. Similarly, the Committee considers that the representation of workers on works councils is not sufficient to ensure a balance of interests.

D. Suggestions and recommendations

15. The Committee recommends that the State party should envisage taking the measures necessary to place on an equal footing the international human rights instruments, in particular the Covenant, and the European Convention for the Protection of Human Rights and Fundamental Freedoms as regards the place they occupy in the domestic legal order.

16. The Committee recommends that the Austrian authorities should continue their efforts to ensure de facto equality between men and women, especially in the areas of access to employment, remuneration for equal work, working conditions, the right to social security and participation in higher education.

17. The Committee recommends that the Austrian Government should take the necessary measures to ensure that the implementation of the new immigration and residence laws will not impede the exercise, by non-nationals, of the rights set out in the Covenant.

18. The Committee urges the State party to monitor carefully the possible effects of unemployment and reduced social welfare services on the realization

of economic, social and cultural rights, in particular for the most vulnerable groups in society, and to take the necessary measures to mitigate their adverse repercussions.

19. Taking account of the observations made by the ILO Committee of Experts on the Application of Conventions and Recommendations, in its 1994 report, concerning work done by detainees within prisons for private businesses, the Committee endorses the recommendations addressed to the Government of Austria encouraging it to take measures to improve the level of remuneration and social welfare of such detainees.

20. The Committee recommends that the State party should continue its efforts to ensure the exercise of all the rights recognized in article 8 of the Covenant, in particular for workers employed in small businesses.

21. The Committee deems it essential that the State party should maintain a dialogue with civil society in the preparation of reports to the Committee and should disseminate them as widely as possible.